

charge of the child, the negligence of the person in charge is no answer to a claim made on behalf of the child against the defendant. (See *Oliver v. Birmingham and Midland Motor Omnibus Company, Limited* ⁽³⁾).

As a result of the accident the plaintiff had a deep lacerated wound 6 inches long running across the face involving the nasal bone and the lower margin of the left orbit. The wound has healed satisfactorily, but she is left with a permanent disfigurement of her face by reason of two rather large and prominent scars, the first being 5 inches long and running from the right cheek astride the nasal bridge to the left cheek and the second being one inch long and below the right eye. There is also a scar causing the left nostril to narrow as it goes down. This has caused a certain amount of blocking of the left nostril which will obstruct the normal flow of the nasal discharge during a cold. Furthermore, the plaintiff's mouth is slightly crooked to the left when she smiles because the muscles of the right cheek do not pull up the right angle of the mouth. The orthopaedic surgeon has expressed the opinion that plastic surgery may reduce the facial disfigurement to some extent, but the scars will still remain. The estimated cost of such plastic surgery is said to be in the neighbourhood of \$5,000.

That brings me to the question of damages. Special damages are agreed at \$600. In assessing the general damages, apart from pain and suffering the main consideration is the disfigurement of the plaintiff's face. The plaintiff is a good-looking child. She looks bright and cheerful even after her disfigurement, but there is no doubt that the scars on her face will be a source of embarrassment to her throughout her life. It is always difficult to say in such cases to what extent the scars will affect her marriage prospects when she grows up, but that they will have some effect cannot be doubted. Taking into account the pain and suffering that she must have undergone and the permanent disfigurement of her face which is not likely to disappear completely by plastic surgery, I would assess general damages at \$10,000. There will therefore be judgment for the plaintiff for \$10,600 and costs.

Judgment for the plaintiff.

Solicitors: *Bahwant Singh & Co.; Donaldson & Burkinshaw.*

KARUTHAN CHETTIAR v. PARAMESWARA IYER

[A.C.J. (Gill J.) April 13, 1966]

[K.L. — Civil Appeal No. 3 of 1966]

Moneylenders — Memorandum in writing of contract — Patent ambiguity — No indication whether date of

interest was to be per annum or per month — Security for loan cash cheque for the amount lent — Production of statement of account in proceedings before the Court — Evidence Ordinance, 1950, s. 93 — Moneylenders Ordinance, 1951, ss. 8, 16 and 21(1).

This was an appeal against the decision of the magistrate who had dismissed an action by the plaintiff, a licensed moneylender, for the recovery of money lent to the defendant. In the memorandum which contained the terms of the contract in this case the provision relating to interest read "Rate of interest: 18% per annum/month". The learned magistrate held that by reason of this ambiguity the contract was not enforceable by reason of non-compliance with section 16(3)(c) of the Moneylenders Ordinance, 1951. At the hearing of the appeal the respondent's counsel also submitted that (a) the transaction was illegal and void as the security given in this case was a cash cheque for the amount of the money lent, and (b) a statement of account was not produced as required by section 21(1) of the Ordinance, as although a statement of account was exhibited to the statement of claim it was not signed by the plaintiff or his agent.

Held: (1) as the ambiguity in this case was a patent one, evidence could not be given *aliunde* and therefore as there was no indication whether the rate of interest was to be per annum or per month the learned magistrate was right in dismissing the action;

(2) in this case reference was made in the memorandum to the cheque by its number so that there could be no question of anybody other than the plaintiff being in a position to sue the defendant on the cheque and therefore the taking of the cheque did not render the contract illegal or void under section 8(b) of the Moneylenders Ordinance;

(3) what is required under section 21(1) of the Moneylenders Ordinance is the production of the statement of account when proceedings are taken in court and it is immaterial whether the statement is produced by the moneylender or his agent or their solicitors.

Cases referred to:—

- (1) *Abirami Ammal & Anor. v. Meyappa Chettiar* [1959] M.L.J. 149, 151.
- (2) *Kasumu v. Baba-Egbe* [1956] A.C. 539, 551.
- (3) *Gulwant Singh v. Abdul Khalik* [1965] 2 M.L.J. 55.
- (4) *Stirling v. John* [1923] 1 K.B. 557.
- (5) *Shaffer v. Sheffield & Anor.* [1914] 2 K.B. 1.
- (6) *Merz v. South Wales Equitable Money Society Ltd.* [1927] 2 K.B. 366, 371.
- (7) *Victorian Daylesford Syndicate Ltd. v. Dott* [1905] 2 Ch. 624.

CIVIL APPEAL.

A. D. Rajah for appellant.

V. K. Palasuntharam for the respondent.

Cur. Adv. Vult.

Gill J.: This is an appeal against the decision of the magistrate, Kuala Lumpur dismissing an action by the plaintiff/appellant, who is a licensed moneylender, for the recovery of money lent to the defendant/respondent.

The case for the plaintiff briefly was that he lent the defendant a sum of \$500 bearing interest at 18% per annum after a memorandum, as required by section 16 of the Moneylenders Ordinance, 1951 had been executed by the parties

and after the defendant had given to the plaintiff a cash cheque dated the 26th of January, 1960 drawn upon the Bank of Canton as security for the loan. The loan was not repaid in spite of repeated demands and there was due and owing to the plaintiff at the time of the filing of the action a sum of \$898.75 as principal and interest.

The defendant's evidence in relation to the loan briefly was that he had signed a blank memorandum at two places without either filling the body himself or seeing anybody else filling it. The signature of the lender was not there when he signed the memorandum. As regards the cheque, he gave it to one Karuppiyah at his shop because he had taken the money from him, and he had repaid the loan to Karuppiyah with all the interest due in April 1963.

In the event the learned magistrate rejected the defendant's story that he had borrowed the money from Karuppiyah and not from the plaintiff and that he had fully repaid the loan. However, he dismissed the plaintiff's action on the ground that the memorandum did not contain all the terms of the contract in that the rate of interest was not clear from the memorandum itself.

Section 16(1) of the Moneylenders Ordinance, 1951 provides that no contract for the repayment of money lent by a moneylender shall be enforceable unless a memorandum in writing of the contract is signed by the parties or their respective agents. Section 16(3) of the Ordinance requires all the terms of the contract to be stipulated, and in particular requires that the memorandum shall show separately and distinctly (a) the date of the loan, (b) the principal and (c) the rate of interest per annum payable in respect of such loan or, where the interest is not expressed in terms of a rate per centum per annum, the amount of such interest.

In the present case the term of the contract relating to interest as embodied in the memorandum reads as follows:

"Rate of interest: 18% per annum/month."

On the face of it unless the word "annum" or the word "month" was deleted from the contract it was impossible to say what the rate of interest was. It was this ambiguity which led the magistrate into holding that the contract was not enforceable by reason of non-compliance with section 16(3)(c) of the Ordinance and consequently dismissing the action. I fail to see how in the face of that ambiguity the learned magistrate could come to any other conclusion.

It is true that evidence was produced by the plaintiff to show that the rate of interest was 18% per annum, but that was evidence *abunde* and not evidence which was to be found within the four corners of the memorandum itself (see *Abirami Ammal & Anor. v. Meyappa Chettiar*⁽¹⁾).

A In this connection section 93 of the Evidence Ordinance, 1950 provides that when the language used in a document is on its face ambiguous or defective, evidence may not be given of facts which show its meaning or supply its defects. The meaning of that section is shown by the following illustrations:—

B (a) A. agrees in writing to sell a horse to B for \$500 or \$600. Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

C It is to be observed that the ambiguity in question in this case was a patent ambiguity and not a latent one, as there was no indication whether the rate of interest was to be per annum or per month.

D It is true that the learned magistrate dismissed the action on a ground which was purely technical, but he had no option but to do so once he discovered a clear failure to comply with an express provision of the Ordinance. As was stated by Lord Radcliffe in the case of *Kasumu v. Baba-Egbe*⁽²⁾:—

E "When the governing statute enacts that no loan which fails to satisfy any of these requirements is to be enforceable it must be taken to mean what it says, that no court of law is to recognize the lender as having a right at law to get his money back. That is part of the penalty which the statute imposes. There is no room to reform the terms of the loan, since the statute is not concerned with the vice of its content but with the vice of the conditions under which it was made."

F In the circumstances I feel that I have no option myself but to dismiss the appeal. Before concluding the matter, however, I feel that I should deal with some of the other questions of law which were raised by the respondent's counsel in support of the dismissal of the appeal, although they had not been taken at the trial. As these questions can be disposed of without deciding nice questions of fact, they can rightly be taken for the first time in the appellate court (see *Gulwant Singh v. Abdul Khalik*⁽³⁾).

H As I have stated above, the security in this case was a cash cheque for the amount of the money lent. It was contended on behalf of the respondent that by taking as security for the loan a cheque otherwise than in his authorised name contrary to section 8(c) of the Moneylenders Ordinance, 1951, the appellant was guilty of an offence under the Ordinance. It was contended further on the authority of *Stirling v. John*⁽⁴⁾ that the transaction was illegal and void. I learned counsel also drew my attention to the case of *Shaffer v. Sheffield and Anor.*⁽⁵⁾ in which it was held that a similar provision in the English Moneylenders Act, 1900 did not prohibit the moneylender from taking a security on which his name does not appear at all, such as a bill of exchange endorsed to him in blank.

Shaffer's case was referred to by Scrutton L.J. in *Merz v. South Wales Equitable Money Society, Limited*,⁽⁶⁾ although his Lordship refrained from expressing an opinion as to whether it was rightly decided. Atkin L.J. in the same case said:—

"In my opinion the Act provides that if a money-lender takes the security of a promissory note it must be in such a form that the only person who can sue upon it is the moneylender himself in his registered name."

In the present case reference was made in the memorandum to the cheque by its number so that there was no question of anybody other than the plaintiff being in a position to sue the defendant on that cheque. The taking of the cheque as security in this case, therefore, in my opinion, did not render the contract illegal and void. I must add, however, that the penalty imposed by section 8(c) of the Ordinance is not for the protection of revenue but for the protection of the public, so that in a proper case a contravention of the section would render the contract illegal and void (see *Victorian Daylesford Syndicate, Limited v. Dott* ⁽⁷⁾).

Another point taken on behalf of the respondent was that section 18 of the Ordinance had not been complied with, because in the account books kept by the appellant the rate of interest was shown to be \$1.50. I do not think there is much substance in this ground because, if the rate of interest was 18% per annum, it was \$1.50 per month. In any event, this point is tied up with the main point raised, namely, that there was no indication from the memorandum itself as to what the rate of interest was.

The last point raised was with regard to the production of a statement of account when the proceedings are taken in court, as required by section 21(1) of the Ordinance. It was contended that, although a statement of account was exhibited to the statement of claim in this case, it was not signed by the plaintiff or his agent. The short answer to this is that what is required is production of a statement of account. Whether that statement is produced by the moneylender or his money-lending agent or their solicitors, who must be treated as their agents for the purpose of the production of the accounts, is immaterial.

In the result the appeal will be dismissed with costs. Deposit in court to be paid out to the respondent against taxed costs.

Appeal dismissed.

Solicitors: *Lovelace & Hastings; V. K. Palasuntharam.*

A OH AH GOH v. KUAN KEH LAN & ANOR.

[O.C.J. (MacIntyre J.) April 18, 1966]

[Ipoh — Civil Suit No. 68 of 1966]

Practice and Procedure — Writ of summons — Statement of claim — Signing of — Service copy of writ and statement of claim delivered not signed — Application to set aside writ and statement — R.S.C. 1957, O. 3 r. 1 at O. 19 r. 14.

This was an application for an order to set aside a writ of summons and the statement of claim therein. The plaintiff had taken out a writ against the defendants. The issue copies of the writ of summons and the statement of claim had been duly signed by the plaintiff's solicitors but when the documents were served on the defendant neither the indorsement of the claim in the service copy of the writ nor the statement of claim was signed by the plaintiff or her solicitors.

Held: (1) although the service copy of the writ was not a true copy in that it did not indicate it had been signed it was nevertheless a true copy within the meaning of Order 9 rule 2 so far as the particulars of claim were concerned and therefore the writ was not a nullity;

(2) as the statement of claim delivered to the defendant had not been signed by the plaintiff's solicitors it was not a statement of claim within the meaning of the Rules of the Supreme Court and therefore the statement of claim and service thereof must be set aside.

Cases referred to:—

- (1) *MacLaine Stokvis (Malaya) Ltd. v. The Saloma Company* [1959] M.L.J. 241.
- (2) *Cassidy & Co. v. M'Aloon* 32 L.R. Ir. 368.
- (3) *Murray & another v. Stephenson* (1887), 19 Q.B.D. 60.
- (4) *Cheang Chan etc. v. Lee Kim Kok* [1959] M.L.J. 242.

MOTION IN CIVIL SUIT.

N. T. Rajah for the plaintiff.

Ng Chee Kong for the second defendant.

MacIntyre J.: The 2nd defendant moves the court for an order to set aside the writ of summons and the statement of claim herein with the service thereof on the grounds that:—

- (a) the indorsement of claim is not signed by the plaintiff or her solicitors; and
- (b) that the "statement of claim" affixed on the writ of summons is not a statement of claim within the meaning of the Rules of the Supreme Court 1957 and/or in the alternative it is not signed by the plaintiff or her solicitors.

The facts are as follows. On the 10th of March 1966, a copy of the writ in the general form was served on the 2nd defendant with a statement of claim affixed to it. The issue copies of the writ and the statement of claim had been duly signed by the plaintiff's solicitors but neither the indorsement of the claim in the service copy of the writ nor the statement of claim was signed by the plaintiff or her solicitors.

Counsel for the 2nd defendant contended that by virtue of the failure of the solicitors for the plaintiff to sign the indorsement in the service copy of the writ and the statement of